S.B. CIVIL WRIT PETITION NO.3470/2003

Abdul Hameed. vs. Jayanti Lal & anr.

Date : 21.10.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. T Gupta, for the petitioner.

Mr. BN Kalla, for the respondent no.1.

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Heard learned counsel for the parties.

An application for eviction of tenant under Section 16 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950') was filed by the respondent no.1 before the District Collector, Dungarpur on 19.10.2001 for getting possession immediately under the summary procedure. Notices were issued to the tenant/ petitioner who submitted reply. It is relevant to mention here that the suit property was originally belonging to Chabbilal, father of the respondent no.1. The whole of property measuring 50 feet by 50 feet as let out to the petitioner. Chhabilal executed a gift deed in favour of his son – respondent no.1 for half of property and got it registered. However, after the death of Chhabilal, Chhabilal's wife sold whole of the property to wife of the petitioner by registered sale deed. Because of this situation, one suit was filed by the respondent no.1 for cancellation of the sale deed whereas the petitioner's wife filed a suit for cancellation of the gift deed. In both the

suits, it was held that Chhabilal was owner of half of the property, therefore, gift made in favour of the respondent no.1 to the extent of 50% of the property measuring 25 feet x 50 feet situated in western side has been validly gifted to the respondent no.1 and it was also held that wife of Chhabilal was also owner to the extent of half of property, therefore, the sale in favour of petitioner's wife to the extent of half of property is valid. By this, the respondent no.1 became owner of half of property measuring 25 feet x 50 feet situated in western side. The petitioner, who was an Army Personnel and in need of rented premises, submitted application under Section 16 of the Act of 1950 after obtaining permission from the competent authority. In the said eviction petition under Section 16, an application was submitted by the petitioner that since the matter in relation to the property in dispute is pending in High Court against the decision of civil court, therefore, the proceedings under Section 15 be stayed. Learned Collector vide order dated 31.7.2002 stayed the said proceedings. After the decision of appeals by the High Court, an application was submitted by the respondent no.1/landlord before the Collector, Dungarpur with a prayer that the appeals have been decided by the High Court, therefore, the eviction petition filed by the respondent no.1 may be decided, upon which the Collector decided the eviction petition of the respondent no.1 by order dated 9.7.2003 and passed the order of eviction of the petitioner/tenant, therefore, this writ petition to challenge the order of the Collector dated 9.7.2003.

According to learned counsel for the petitioner, the Collector committed serious error of law in entertaining second application of the respondent no.1 under Section 16 of the Act of 1950. According to learned counsel for the petitioner, the petition under Section 16 subsequently filed was barred by law as that was filed after expiry of period of limitation and has also been filed after taking fresh certificate from the competent authority which is required under the Act of 1950. In view of the above, according to learned counsel for the petitioner, the earlier application under Section 16 was pending, therefore, second application could not have been entertained. It is also submitted that the Collector committed serious error of fact in passing the order of eviction of the petitioner from the western portion from the property in dispute which according to learned counsel for the petitioner, is not the location of the property which was bequeathed to the respondent no.1. The Collector also committed error of law by not deciding the issue which are required to be issued before passing the eviction order under Section 16.

I have considered the submissions of learned counsel for the parties and perused the record also which was called and annexed with this file.

So far as the contention of petitioner that the respondent no.1's application under Section 16 filed subsequently was considered and decided by the Collector is

concerned, it appears to be factually wrong. It appears that the ground might have been taken because of the reason that new number has been given by the Collector while deciding the said petition. The record shows that in fact the applicant/respondent did not submit any second petition under Section 16 of the Act of 1950 but he filed application for deciding his petition under Section 16 of the Act of 1950 on the plea that the proceedings which were stayed by the learned Collector because of pendency of civil litigation may be now decided as civil litigation has been decided finally. Otherwise also, it is clear from the order dated 9.7.2003 itself that the Collector first narrated the facts of earlier filed petition and thereafter, took note of the fact that the application has been filed for reviving the earlier filed application. In the subsequently filed application, the only prayer is that his petition under Section 16 be taken up for hearing as the appeals have been decided by the High Court. Therefore, there is no force in the submission of learned counsel for the petitioner that the petition under Section 16 was not maintainable or it was a second petition.

So far as the dispute about the location of the property is concerned, suffice it to state that the copies of the judgments of the civil court dated 5.3.1983 were filed by the respondent no.1 which were very much on record before the learned Collector. It is clear from the judgments of the civil court that the civil court specifically passed the decree holding the respondent no.1

as owner of the western portion of the property in dispute. Not only this, the petitioner himself submitted an application before the Collector in these very proceedings stating therein in para no.1 itself that he is tenant in the western portion of the property in dispute. This admission is in the application whereby the petitioner himself sought to contest the petition of the respondent no.1. The District Collector not only took note of the facts but also appointed Commissioner – Junior Engineer, Municipal Board, Dungarpur to inspect the site. After considering that report, the order was passed for eviction of tenant from the western portion of the property in dispute having measurement 25 feet x 50 feet, therefore, the petitioner cannot be permitted to dispute the facts which he admitted before the court below.

Learned counsel for the petitioner also submitted that an eviction order was obtained by the respondent no.1 against Nandlal and, therefore, in view of the provisions under Section 16, second petition for eviction of tenant under Section 16 of the Act of 1950 was not maintainable. The argument raised by the petitioner is devoid of any force because the petitioner failed to lay down any factual foundation before the learned Collector. Neither the order was placed before the learned Collector nor this point was argued before the learned Collector when it was decided by the learned Collector by order dated 9.7.2003. Here in this writ petition, though the petitioner took ground that Nandlal was tenant in the said premises but he failed to

produce any document to show that any eviction order was obtained by the respondent no.1 against Nandlal.

So far as the satisfaction of the Collector for passing the order under Section 16 is concerned, for that, it is suffice to say that the petitioner even did not contest the petition for eviction on merits which is clear from the impugned order dated 9.7.2003 wherein it was never the case of the petitioner that on merits, the respondent no.1 was not entitled for order of eviction. The only question raised before the Collector was with respect to the identity of the property.

In view of the above, this ground which is sought to be raised cannot be allowed to be raised in a writ petition filed under Article 227 of the Constitution of India.

Apart from it, it is worthwhile to mention here that the petitioner is admittedly tenant in the property in dispute. He is claiming that his wife is owner of half of property and the gift deed which is lying in the file of the Collector clearly reveals that a demarcated property was gifted to the respondent no.1. Therefore, in view of the above, the tenant cannot be permitted to prolong the matter in a case where special provision has been made under the Act of 1950.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

At this stage, learned counsel for the petitioner prayed that he may be given some time to evict the property in question.

Since the petition was filed by the respondent no.1 in the year 2001 and more than four years have passed and looking to the nature of litigation, only a short period of two months can be granted to the petitioner to evict the property in question because the petition has been filed by Ex Army Personnel for his own residence.

Therefore, it is ordered that in case, the petitioner furnishes a written undertaking before the trial court within a period of fifteen days that he shall hand over the vacant possession of the property in question to the landlord by or before 1.1.2006 and shall pay all the arrears of rent, if due, within a period of one month from today, the order under challenge shall not be executed till 31.12.2005. In case of non-compliance of the order or default in payment of rent mentioned above, the order shall become executable forthwith.

(PRAKASH TATIA), J.

S.Phophaliya